

MF 06-6

Tax Type: Motor Fuel Use Tax

Issue: UPIA Willful Failure

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket # 00-ST-0000
v.)	Acct # 000000000000
)	Tax Type: IFTA
ABC TRUCKING, LLC)	
)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; James L. Brougher of Kesler, Laury, Garman, Brougher, Lietz & Townsley, P.C. for ABC Trucking, LLC.

Synopsis:

The Department of Revenue (“Department”) issued a Notice of Tax Liability to ABC Trucking, LLC (“taxpayer”) that assessed a penalty and interest for the late filing of a motor fuel use tax return. The taxpayer timely protested the Notice, and an evidentiary hearing was held during which the taxpayer argued that the return was timely filed. For the following reasons, it is recommended that this matter be resolved in favor of the taxpayer.

FINDINGS OF FACT:

1. The taxpayer operates a trucking business located in Anywhere, Illinois. (Tr. p. 26)

2. The taxpayer's MFUT-15 IFTA Quarterly Return for the fourth quarter of 2004 was due January 31, 2005, which was a Monday. (Dept. Ex. #1)

3. The taxpayer's employee who prepares the quarterly returns uses a Pitney Bowes postage machine to put postage on the envelopes that contain the returns. (Dept. Ex. #1, p. 4; Taxpayer Ex. #1; Tr. p. 14)

4. The Pitney Bowes machine is the only postage machine used by the taxpayer to send its mail. (Tr. pp. 14, 29)

5. The envelope used to mail the return for the fourth quarter of 2004 shows that the Pitney Bowes machine was used to stamp postage on the envelope on January 26, 2005. The envelope also shows a postage stamp from Anywhere, Illinois with a date of February 1, 2005. (Dept. Ex. #1, p. 4)

6. The taxpayer's cancelled check for the payment of the fourth quarter taxes is dated January 26, 2005. (Taxpayer Ex. #2)

7. After the taxpayer's returns are put into envelopes, at the end of the day on which the returns are prepared the taxpayer's employee who prepares the returns drops the envelopes into the metered mailbox at the Anywhere post office. (Tr. pp. 16-17)

8. The instruction manual for the Pitney Bowes machine states as follows: "Since you must mail your envelope on the day that is printed in the meter stamp, be sure to check the date on the display before you print the postage. If you plan to mail the

envelope after the postal carrier has picked up the mail, set the date for the next day using the advance date function.” (Taxpayer Ex. #1, p. 10)

9. The instruction manual provides instructions for temporarily advancing the date. After these instructions it states, “Always restore the current date when finished. If you do not, the date will remain inaccurate.” It then provides instructions for resetting the meter date. There are also instructions for turning off the date, but not for setting the date back further than the current date. (Taxpayer Ex. #1, pp. 10, 14)

10. On March 28, 2005, the Department issued a Notice of Tax Liability to the taxpayer showing a penalty of \$311.36 plus interest for failing to timely file the return. The Notice was admitted into evidence under the certification of the Director of the Department. (Dept. Ex. #1)

CONCLUSIONS OF LAW:

The International Fuel Tax Agreement has a provision concerning the due date for returns and provides in relevant part as follows:

The tax return and full payment of taxes shall be due on the last day of the month following the close of the reporting period for which the return is due. * * * Returns shall be considered filed and received on :

The date shown by the U.S. Postal Service or the Canada Post or Delivery Service cancellation mark stamped on the envelope which contains the return and is properly addressed to the designated department of the base jurisdiction; **or**

The date it was mailed, if proof satisfactory to the base jurisdiction is available to establish the date of mailing. Article IX, ¶R960.100 (emphasis added)

Although the Department contends that the return was mailed on February 1, 2005, the taxpayer has presented sufficient proof that the return was mailed on January 26, 2005. The envelope shows that it was stamped with the metered stamp on January

26, 2005. The instruction manual provides instructions for advancing the date, turning the date off, and resetting the date to the current date, but it does not show that the date may be set back. The taxpayer's employee who mails the returns testified that the regulations concerning metered mail require an envelope to be put in the metered box on the actual drop-off date, otherwise the envelope will be returned to the sender. The instruction manual confirms this because it states that you must mail your envelope on the day that is printed in the meter stamp. Under cross-examination, the taxpayer's employee admitted that it is possible to run an empty envelope through the Pitney Bowes machine, but she states that she has never done that. She also testified that the Anywhere post office sends its metered mail to Anywhere to be postmarked, which explains why there is a stamp from the Anywhere office on the envelope. The evidence indicates that the taxpayer mailed the return on January 26, 2005.

Recommendation:

For the foregoing reasons, it is recommended that the Notice of Tax Liability be dismissed.

Linda Olivero
Administrative Law Judge

Enter: January 13, 2006